



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,437	04/11/2001	Marc Alaia	46700-5004-10	3808
28977	7590	10/21/2005		
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			EXAMINER MILEF, ELDA G	
			ART UNIT	PAPER NUMBER
			3628	
DATE MAILED: 10/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/832,437	ALAIA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Elda Milef	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 4/11/2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 89-148 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 89-148 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/11/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/11/2001, 4/18/2003</u>  | 6) <input type="checkbox"/> Other: _____                                    |

*Ch*

Art Unit: 3628

**DETAILED ACTION*****Priority***

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. [1] as follows:

It is noted that this application appears to claim subject matter disclosed in prior Application No. 09/311,555, filed 5/14/1999. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all non-provisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the

Art Unit: 3628

application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was

Art Unit: 3628

due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

The application data sheet submitted by the Applicant fails to identify the relationship (i.e. continuation, continuation in part, or divisional) of parent application.

Art Unit: 3628

### ***Information Disclosure Statement***

2. The citations not considered by the Examiner have a line drawn through the citation. A legible copy of each cited foreign patent document, NPL, and unpublished U.S. patent application must accompany the conventional IDS form and the requirements of 37 CFR 1.97 and 1.98 must be complied with for the IDS to be considered by the Office.

### ***Claim Objections***

3. Claim 126 is objected to because of the following informalities: "The machine-readable medium of claim 99" should be -The machine-readable medium of claim 115-. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

Art Unit: 3628

United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 89,92-94,97,98 are rejected under 35 U.S.C. 102(e) as being anticipated by Fisher et al. (US Patent No. 5,835,896).

**Re claim 89:** Fisher et al. disclose setting a bid status to a first status for a lot with a closing time ("the electronic auction system...updates the bidders with the current auction status information, closes the auction from further bidding when appropriate, and notifies the winning bidder or bidders and loser or losers as to the auction outcome")-see col 6, (lines 8-11) and Abstract;

setting said bid status to a second status at said closing time; determining whether to set another bid status for said lot; and setting said bid status in accordance with said determination. ("When auction manager 26 determines that a new lot should be opened for bidding or an available lot should be closed, it instructs merchandise catalog page generator 25...")-see cols. 7 and 8, in particular col. 8, lines 6-14.

**Re claims 92 and 93:** Fisher disclose receiving message to set said bid status to close or to open; and determining to set

Art Unit: 3628

bid status to close or to open in accordance with said message.

-see col. 8, lines 5-29.

**Re claims 94,97,98:** Further machine-readable medium would have been necessary to perform the method of previously rejected claims 89, 92, and 93 respectively are therefore rejected using the same art and rationale.

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 99-130,139-148 are rejected under 35

U.S.C. 102(e) as being anticipated by Fraser et al. (US Patent No. 5,905,974).

**Re claim 99:** Fraser disclose:

setting a bid status to a first status -see col. 8  
and ("various states");

setting said bid status to a second status at closing  
time -see col. 8 and Fig 11 ("Ends" and Uncleared entry times  
out").



Art Unit: 3628

determining whether a return to open trigger has occurred. Fraser shows the state of the auction moving from a "When State" in which no trader entries are permitted and customers are blocked from entering on the active side, "BID/Offer State" or open state. -see col. 11, lines 26-44, and cols. 11-17.

setting said bid status to a third status according to said determination ("More particularly, errors can arise due to incorrect entries into the system, a miscommunication...This invention provides ways for the broker to effectively "undo" a trade, either by canceling a pending order, or rolling-back executions during a trade state...In the Bid-Offer State...In the When State... During the Workdown State... During the Workup State..." )-see col.16, lines 54-67 and col. 17 lines 1-62;

Art Unit: 3628

wherein the sponsor and the bidders are coupled electronically over a communications network during the auction ("trading activity is accomplished to Communication Server 30...communication lines")-see col. 7, lines 33-39.

**Re claim 100:** Fraser disclose said first status is an open status (Bid/Offer State reflects the open status")-see col. 8, lines 37-41.

**Re claim 101:** Fraser disclose said first status is an overtime status ("second interval timer")-see col. 12, lines 1-6, and col. 11.

**Re claim 102:** Fraser disclose said second status is a pending status ("pending bid, pending offer ") -see Table 2, col.6.

**Re claim 103:** Fraser disclose wherein said pending status indicates that bids are not currently being accepted, but that the bid status may change such that bids will be again be accepted. ("During When State processing...pending uncleared Bid/offer...Once When State processing has been initiated , no trader entries from the passive side are permitted and customers are blocked from entering on the active side...Entries on the uncleared (active) side drive the system back to the Bid/Offer State preceding a trade.")-see col. 11, lines 10-44 through col.-12.

Art Unit: 3628

**Re claim 104:** Fraser disclose said third status is a closed for bidding status.-see ("When State"), col. 11, lines 26-67.

**Re claim 105:** Fraser disclose wherein said third status is an available for bidding status. ("drive the system back to the Bid/Offer State preceding a trade")-see col. 11

**Re claim 106:** Fraser discloses said third status is the same as said first status because various "states" of the auction are disclosed and ("Initial trading is always predicted on the Bid/Offer State, with the sequence process, assessing system inputs for a change of the current state... As each state is entered, the protocols are shifted and new rules to trading apply.")-see col. 8, lines 38-61.

**Re claims 107 and 108:** Fraser disclose:

determining whether an automatic close flag is set to Yes; and determining to set said bid status to closed if said automatic close flag is set to Yes and an intervening condition does not occur prior to expiration of a pending interval or the intervening condition does occur prior to expiration of a pending interval. ("In particular, as noted above, the uncleared status exists for a defined interval--controlled by computer driven timer. It is only during this interval that a When State can be instituted, which can then only last until resolved by

Art Unit: 3628

either the action of the original Makers on the passive side, or by the expiration of the interval timer within system logic.") - see col. 11, lines 4-9.

**Re claims 109 and 110:** Fraser disclose:

determining whether an automatic close flag is set to Yes; and determining to set said bid status to closed if said automatic close flag is set to No and an intervening condition does not occur or does occur prior to expiration of a pending interval. ("When state processing " and "second interval timer")-see cols 11 and 12.

**Re claims 111 and 112:** Fraser disclose:

determining whether an automatic close flag is set to Yes; and determining to set said bid status to an available for bidding status if said automatic close flag is set to Yes and an intervening condition occurs or does not occur prior to expiration of a pending interval. ("When state" and "drive the system back to the Bid/Offer State...)-see col. 11 and 12, and col. 11, lines 26-35.

**Re claims 113 and 114:** Fraser disclose:

determining whether an automatic close flag is set to Yes; and determining to set said bid status to an available for bidding status if said automatic close flag is set to No and an intervening condition occurs or does not occur prior to

Art Unit: 3628

expiration of a pending interval. ("When state" and "drive the system back to the Bid/Offer State...)-see col. 11 and 12, and col. 11, lines 26-35.

**Re claims 115-122:** Further machine-readable medium would have been necessary to perform the method of previously rejected claims 99-106 respectively, and are therefore rejected using the same art and rationale.

**Re claims 123-130:** Further machine-readable medium would have been necessary to perform the method of previously rejected claims 107-114 respectively, and are therefore rejected

Art Unit: 3628

using the same art and rationale.

**Re claim 139:** Fraser disclose:

displaying information about a lot, said information including a bid status of the lot, wherein said bid status indicates that the lot has been closed for bidding, but that the lot may subsequently reopen bidding-("During When State processing...the system displays...Bid/Offers outstanding...")-see col. 11, lines 10-34;

determining that a bid should be submitted for said lot; informing an auction coordinator of said determination; and displaying an updated bid status that indicates that the lot is available for bidding. ("drive the system back to the Bid/Offer State...") -see col. 11, lines 26-35, and cols. 10-12.

**Re claim 140:** Fraser disclose:

said information includes a lot closing time, and said displaying an updated bid status also displays an updated lot closing time.-see ("second interval timer...")-col. 11, lines 40-67 and col. 12, lines 1-7.

**Re claim 143:** Fraser disclose:

A bidding device operated by a bidder during a multi-lot auction said bidding device

comprising software that enables the bidder to submit bids to an online auction ("It is yet another object of the

Art Unit: 3628

present invention to provide a database system linked to the auction processor for collecting, filtering, and distributing select market data in near real time")-see col. 4, lines 33-36,; wherein said bidding device displays information about a first lot, said information including a first closing time for the first lot, and a first bid status for the first lot("Accordingly, uncleared presentations are seen on the screens of only these participants for a system set time interval--and only those customers with current participation can lift or hit these uncleared entries. After the preset time interval has run (tracked by system internal clock) the uncleared bids--if still extant--become available beyond the current participants.")-see col. 10, lines 1-8;

Art Unit: 3628

wherein if said bid status indicates that the lot is closed for bidding, but may subsequently reopen, and said bidder communicates with an auction coordinator of a lost bidding opportunity, said bidding device displays an updated first bid status indicating that the lot has reopened for bidding and an updated first closing time.--see cols. 11-12.

**Re claim 144:** Fraser disclose:

wherein said updated first closing time is a later closing time. -see ("second interval timer"), col. 11-12.

**Re claim 145:** Fraser disclose:

wherein at updated first closing time, said bidding device displays an updated bid status indicating that the lot is closed for bidding, but may subsequently reopen ("During When State...the system displays...")-see col. 11, lines 10-35, and cols. 10-12 in general.

**Re claim 146:** Fraser disclose:

wherein at the end of a pending interval, said bidding device displays an updated bid status indicating that the lot is closed for bidding and will not reopen. ("In particular...the uncleared status exists for a defined interval-controlled by computer driven timer...at test 850, the system determines if these makers intercept the Aggressor before the time interval expires. If not, the new Aggressor is set...and logic continues



Art Unit: 3628

to the next State, block 880..."-see col. 11, lines 4-58, and cols. 10-12 in general.

**Re claim 147:** Fraser disclose:

wherein said bidding device displays information about a first lot, said information including a first closing time for the first lot, and a first bid status for the first lot;

wherein said first bid status indicates that the lot is closed for bidding, but may subsequently reopen, and

wherein at the end of a pending interval, said bidding device displays an updated bid status indicating that that lot is closed for bidding and will not reopen. -see cols. 10-12.

**Re claim 148:** Fraser disclose:

A method of controlling the transition to a closed state in an online auction, comprising;

(a) receiving bids until a closing time;

(b) setting a bid status to a Pending status, setting an automatic close flag to Yes and

setting a pending interval to a maximum pending time

(c) determining if return to open trigger has occurred and setting the automatic close flag to No in accordance with said determination;

(d) decrementing said pending interval;

Art Unit: 3628

(e) repeating steps (c) and (d) while the pending interval is greater than zero;

(9 if the automatic close flag is Yes, setting the bid status to Closed at the end of the pending interval; and

(g) if the automatic close flag is No, setting the bid status to Open at the end of the pending interval. -see cols. 10-12.

**Re claims 141,142:** Further machine-readable medium would have been necessary to perform the method of previously rejected claims 139 and 140 respectively, and are therefore rejected using the same art and rationale.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

Art Unit: 3628

establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 90,91,95,96,131-138 are rejected under 35

U.S.C. 103(a) as being unpatentable over Fisher et al. in view of Fraser et al. (US Patent No. 5,905,974).

**Re claim 90:** Although Fisher et al. do disclose updating current auction status information, and said first status is an open status -see col. 8, lines 9-11. Fisher do not disclose said second status is a pending status. Fraser however, discloses ("pending bid, pending offer ") -see Table 2, col.6 and ("More particularly, errors can arise due to incorrect entries into the system, a miscommunication between a broker and trader, and the like. This invention preferably provides ways for the broker to effectively "undo" a trade, either by canceling a pending order...") -see col. 17, also, see cols. 8-12. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include various states (status) including pending as

Art Unit: 3628

was shown by Fraser in order to provide a bidder the opportunity to reconsider the bid.

**Re claim 91:** Fisher disclose said lot has an associated status parameter ("current auction status information")-see Abstract and cols. 7-8.

Fisher do not disclose pending interval. Fraser however, teaches ("Accordingly, uncleared presentations are seen...for a system set time interval-and only those customers with current participation can lift or hit these uncleared entries.")-see col. 10, lines 1-15 and the definitions of hit and lift in Table 2, col. 6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include a pending time interval as was taught by Fraser in order to provide a time limit on pending bids so as to allow the system to close the auction or re-open the auction to other bidders if the pending bid is not executed.

**Re claim 131:** Fisher disclose:

setting a bidding status for said lot to a first status indicating that bids will be received from bidders on said lot (Auction manager 26 is also responsible for opening and closing auctions. This entails making merchandise lots available for bidding by customers...")-see co. 8, lines 1-14;

Art Unit: 3628

receiving bids from bidders for said lot (Auction manager 26 preferably frequently queries the bid database 31 to see if any new bids have been placed")-see col. 7, lines 66-67;

at said closing time, changing said bidding status for said lot to a second status indicating that bids will not be accepted on said lot ("Auction manager 26 is also responsible for opening and closing auctions. This entails making merchandise lots available for bidding by customers and disabling their associated buy or bid features on the merchandise pages that have been posted to potential bidders but have closed. When auction manager 26 determines that a new lot should be opened for bidding or an available lot should be closed")-see col. 8, lines 1-14.

Fisher do not disclose:

but that said bidding status may subsequently be changed to a status indicating that bids will be received;

determining whether a return to open trigger event has occurred within a predefined time period following the changing of said bidding status from said first status to said second status.

Fraser however, disclose ("Once When State processing has been initiated, no trader entries from the passive side are permitted and customers are blocked from entering...Entries ...will

Art Unit: 3628

come which drive the system back to the Bid/Offer State preceding a trade.")-see col. 11, lines 26-34 and ("second interval")-cols. 11-12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include closing the bid status and subsequently opening bidding as was shown by Fraser in order to provide bidders with a second time interval in order to extend the amount of time to place bids.

if said return to open trigger event has not occurred, setting said bidding status to a third status indicating that bidding for said lot is closed ("the system determines if these makers intercept the Aggressor before the time interval expires. If not...the new Aggressor is set, block 870, and logic continues to the nest State, block 880.")-see col. 11, lines 53-58, and cols. 11-12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include setting the bidding state to a different state once bidding is closed as was done by Fraser in order for the computer program to execute the transaction in an efficient manner;

if said return to open trigger event has occurred, setting said bidding status to a third status indicating that bidding for said lot is open for bidding.-see cols 11-12. It

Art Unit: 3628

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include setting the bidding status to an open or BID/Offer Status as was done by Fraser in order to allow bidders an opportunity to bid on lots that may have been unavailable to them previously.

**Re claim 132:** Fisher do not disclose:

wherein said determining comprises receiving a communication from a bidder indicating a request for an opportunity for further bidding. Fraser however, shows ("The When State is triggered...")-see col. 10, lines 61-67 through col. 11, lines 1-56. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include receiving a command from a bidder for an extension of the time interval allowed for bidding in order to allow bidders an opportunity to bid on lots that may have been unavailable to them previously.

**Re claim 133:** Fisher do not disclose:

wherein if said return to open trigger event has occurred, said third status is the same as said first status. Fraser, however shows ("drive the system back to the Bid/Offer State preceding a trade...")-see col. 11, lines 26-34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include the

Art Unit: 3628

third state is the same as the first state or reverting back to Bid/Offer State in order to allow bidders an opportunity to bid on lots that may have been unavailable to them previously.

**Re claim 137: Fisher disclose:**

setting a first closing time for a first lot, and a second closing time for a second lot, wherein said first closing time precedes said second closing time -see cols. 7 and 8, in particular col. 8, lines 5-14 ("Auction manager 26 is also responsible for opening and closing auctions. This entails making merchandise lots available for bidding by customers and disabling their associated buy or bid features on the merchandise pages that have been posted to potential bidders but have closed. When auction manager 26 determines that a new lot should be opened for bidding or an available lot should be closed, it instructs merchandise catalog page generator 25 to create or update the merchandise catalog pages for the appropriate lots.");

setting a first bid status for the first lot to a value indicating that bids will be accepted for said first lot; setting a second bid status for the second lot to a value indicating that bids will be accepted for said second lot; at said first closing time, setting said first bid status to a value indicating that bids will not be accepted for said first



Art Unit: 3628

lot, but said first bid status may subsequently be changed to a value indicating that bids will be accepted for said first lot - see col. 8, lines 1-14.;

Fisher do not disclose:

before said second closing time, determining whether a return to open trigger condition has occurred. Fraser however, shows ("Once When State processing has been initiated, no trader entries from the passive side are permitted and customers are blocked from entering on the active side... drive the system back to the Bid/Offer State preceding the trade")-see col. 11, lines 26-34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher to include determining if the closed status should be changed to open status in order to allow bidders an opportunity to bid on any remaining items available.

if said condition has occurred, setting said first bid status to a status indicating that bids will be accepted for said first lot, and updating said first closing time so that it is subsequent to said second closing time. Frazer disclose ("the second interval timer provides both original Makers priority over customer...")-see cols. 11 and 12 in particular col. 12, lines 1-5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

Art Unit: 3628

modify Fisher to include extending the time available to place a bid so as to give the bidders an opportunity to consider the lot and execute a bid.

**Re claims 95,96,134-136, 138:** Further machine-readable medium would have been necessary to perform the method of previously rejected claims 90,91,131-133,137 respectively are therefore rejected using the same art and rationale.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,850,907 (Lutnick et al.)-cited for automated price improvement protocol processor for implementing transaction management of auction-based trading.

US Patent No. 6,021,398 (Ausubel)-cited for a computer implemented methods and apparatus for auctions.

US PG. Pub. No. US 2004/0059646 (Harrington et al.)-cited for process and apparatus for conducting auctions over electronic networks.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elda Milef whose telephone number is (571)272-8124. The examiner can normally be reached on Monday - Friday 9:15 am to 5:45 pm.

Art Unit: 3628

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

\*\*\*

  
HYUNG SOUGH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3628